

JCJQrimS

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x  
3 UNITED STATES OF AMERICA

4 v.

16 CR 841 (GBD)  
Sentence

5 EVALDAS RIMASAUSKAS

6 Defendant

-----x

7  
8 New York, N.Y.  
9 December 19, 2019  
10:05 a.m.

10 Before:

11 HON. GEORGE B. DANIELS

District Judge

12  
13 APPEARANCES

14 GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

15 EUN YOUNG CHOI

16 OLGA I. ZVEROVICH

Assistant United States Attorney

17 PAUL D. PETRUS, JR

18 Attorney for Defendant

19 ALSO PRESENT: JONATHAN POLONITZA, FBI

YANA AGOUREEV, Interpreter (Russian)

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(Case called)

DEPUTY CLERK: Will the parties please rise and make they're appearances beginning with the government.

MS. CHOI: Good morning, your Honor.

Eun Choi on behalf of the government. With me at counsel table is Olga Zverovich of our office, as well as Special Agent John Polonitza of the FBI.

THE COURT: Good morning.

MR. PETRUS: Good morning, your Honor.

Paul Petrus on behalf of Mr. Evaldas Rimasauskas.

THE COURT: Good morning. I received further submissions from the parties after our last meeting.

Let me turn back first to the government. Does the government wish to be heard further on the sentence?

MS. CHOI: No, your Honor. I think it's set forth in our submissions what the government's position is. If your Honor has any questions regarding either the prior submission or our more recent submission, we're happy to answer them.

THE COURT: Mr. Petrus, did you want to be heard further?

MR. PETRUS: Your Honor, I too rest on the record that we've submitted. I would just also add that, actually, he served, including the time in Lithuania, approximately two years and nine months, not two years and eight months. So for all the reasons I've submitted, I believe a sentence of time

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1 served is the correct and just one in this matter.

2 THE COURT: Let me turn back to the government then.  
3 Remind me of the extent of the loss and how that has been  
4 calculated.

5 MS. CHOI: Yes, your Honor. There was -- as you know,  
6 the guidelines are key to intended loss, so there was an amount  
7 of loss that was attributable to victim one and an amount of  
8 loss attributable to victim two, the first of which -- one  
9 moment, your Honor.

10 (Attorneys consult)

11 MS. CHOI: I'm just trying to find an exact breakdown,  
12 but the amount of intended loss was \$120 million, which is  
13 essentially is about \$24 million that was successfully stolen  
14 from victim one; that victim one received after the Latvian  
15 civil fraud proceeding where the Latvian court made the final  
16 determination that in fact these were funds that had been  
17 stolen from victim one. Those are the ones that went directly  
18 into the bank account that the defendant opened and had control  
19 over.

20 And then the second sort of tranche of that money is  
21 about \$97 million, I believe, that is attributable to victim  
22 two. Of that, a substantial portion was in fact frozen at the  
23 time that those wires were detected to be fraudulent and  
24 returned to victim two, so victim two did not suffer an actual  
25 loss of that amount, but there is still remaining an amount

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1 that is outstanding.

2 One moment, your Honor.

3 So, the exact numbers, just so you have them, your  
4 Honor, are 23.26 million for victim one and 98.87 million for  
5 victim two. And so the intended loss figure is the sum of  
6 those two because that's the total amount that was intended by  
7 the defendant. And the actual loss outstanding is about a  
8 \$23 million -- whatever is in the restitution order, but it's  
9 that amount that is still outstanding that has not been  
10 successfully reversed back to victim two at this point in time.  
11 And we are hoping that once there is a situation in which final  
12 judgment is entered in this case, we can continue with our  
13 attempts to get that money back from Latvia. That specific  
14 amount, your Honor, I think we handed up the restitution order  
15 last time is \$26,479,079.24. So that's the amount that's  
16 outstanding that was in fact an injury to victim two.

17 THE COURT: I'm still not clear about when you say  
18 you're hopeful to see if you can get the money back. I'm not  
19 sure what that means.

20 MS. CHOI: Meaning, we're still in the midst of civil  
21 procedures in Cyprus to try to get those funds back.

22 THE COURT: And those funds are where.

23 MS. CHOI: They're in Cyprus; they're frozen in  
24 Cyprus. They're frozen in some other places as well. Those  
25 are some sort of civil forfeiture division that we are trying

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1 to do with our lawful enforcement partners outside of the  
2 United States.

3 THE COURT: How much money has been identified and  
4 frozen that's available for you to --

5 MS. CHOI: That is the amount -- some of it -- that is  
6 the amount that would be restitution in the sense that that's  
7 the amount that the defendant in fact caused harm to victim  
8 two, and that's how much money they were essentially out from  
9 the fraud.

10 A portion of that money has been frozen in various  
11 countries, and we're trying to get that money back, but it is a  
12 lengthy process because it involves civil forfeiture remedies  
13 in countries that are all over the place, in part, because  
14 those of the countries in which the accounts were held that the  
15 defendant and whomever he was working with then sent the stolen  
16 funds. So we're trying -- so once that second transfer  
17 happened, those funds were in a variety of bank accounts.  
18 We're trying to get those funds back, but those are sort of our  
19 efforts to date.

20 THE COURT: So what amount of money was actually --

21 MS. CHOI: Stolen?

22 THE COURT: -- lost and unrecoverable?

23 MS. CHOI: Right now, it is not recovered, the  
24 \$26 million in the restitution amount.

25 THE COURT: When you say "not recovered," does that

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1 include the money you identified in accounts?

2 MS. CHOI: Yes.

3 THE COURT: How much money is unknown in terms of  
4 where it's gone?

5 MS. CHOI: The majority -- I'm being told by the case  
6 agent, the majority of the \$26 million is actually lost and we  
7 did not freeze it in time.

8 THE COURT: So what amount of money is frozen?

9 MS. CHOI: Your Honor, one moment.

10 (Pause)

11 MS. CHOI: I think it's approximately \$5 million  
12 that's actually been frozen that we've been able to -- your  
13 Honor, just as background, the way that this works is once a  
14 fraud was detected, we had to send requests to freeze the money  
15 to various countries, and it was not a hundred percent  
16 successful. So there will be significant loss to victim two.

17 In any event, of course, with regard to restitution,  
18 to the extent that the victim receives those funds from these  
19 outstanding legal requests that are made to third-party  
20 countries, that restitution amount would decrease for the  
21 defendant. He would not be liable for the full amount.

22 THE COURT: But you've identified approximately  
23 \$5 million in accounts frozen of approximately \$25- or  
24 \$26 million?

25 MS. CHOI: Yes. Your Honor, I don't have the precise

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1 numbers. And I can, of course, let your Honor know what the  
2 precise numbers are. I just don't have them with me.

3 THE COURT: I'm just trying to understand where do you  
4 think that money went? And I know you say that there was some  
5 attempt at cooperation by the defendant, and I'm trying to  
6 figure out whether or not there is any significant or any leads  
7 that were provided that give you some idea of what, (1)  
8 happened to this money, and (2) who else was involved in this  
9 crime.

10 MS. CHOI: Your Honor, those -- I mean, one moment.

11 (Counsel consult)

12 MS. CHOI: Your Honor, I think the defendant would  
13 request a sidebar on the question.

14 THE COURT: All right. Come on up.

15 (Continued on next page)

16 (Pages 8 to 24 sealed sidebar)

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(In open court)

THE COURT: Before I hear from the defendant, anything further from the government?

MS. CHOI: No, your Honor.

THE COURT: Anything further?

MR. PETRUS: Again, I just remind the Court my client has no prior record. It's his first offense, and I ask the Court, for all the reasons I submitted, to give him a sentence of time served, and Mr. Rimasauskas is prepared to say something.

THE COURT: Yes, sir.

THE DEFENDANT: Your Honor, I regret that I committed this crime. And I can promise you, your Honor, that it will be the first and last time I find myself in a courtroom. I very much want to return back to my native country and to hug my relatives that I have not seen for a very long time. I want to attempt to resurrect my construction business, and I want to make an honest and sober living. And, once again, I apologize. And thank you, your Honor.

THE COURT: All right. I've reviewed the presentence report and the factual recitations in the presentence report. I accept the guideline range as calculated. There is a total offense level of 30 and a Criminal History Category I.

I have considered all the factors in 18 U.S.C. 3553(a) relative to sentence, and I've reviewed the submissions by the



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1 parties and I have considered the extensive arguments made by  
2 the parties with regard to same.

3 In this case, given the facts as laid out to me, I  
4 believe the defendant warrants some consideration with regard  
5 to his attempted proffers and cooperation with the government,  
6 although there is no basis for me to conclude that that  
7 cooperation led to any significant investigations or  
8 prosecutions, or that that attempted cooperation was considered  
9 to be valuable or significant to the government in  
10 investigating this crime or any other crime. I have also taken  
11 into consideration that the defendant has no prior record.

12 But I think all of those factors warrant my imposing a  
13 sentence giving consideration to those factors, and the  
14 arguments made by counsel warrant a sentence below the  
15 guideline range. However, I think that this is a very, very  
16 serious crime, and I think a sentence of time served is  
17 inappropriate for the nature of this crime. It's a significant  
18 crime with millions of dollars of losses in a multimillion  
19 dollar, complex international scheme that the defendant played  
20 a major role in. Obviously, there had to be involved other  
21 individuals who still have not been prosecuted for this crime  
22 and millions of dollars that are still unaccounted for.

23 So, in this case, considering all of those factors, I  
24 am going to impose a sentence of 60 months. I am going to  
25 order restitution and forfeiture in the amount of \$26,479,079,

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1 and forfeiture in the amount -- was there a consent forfeiture  
2 order already? I know there was a restitution order.

3 MS. CHOI: Your Honor, I believe that we handed up the  
4 consent order of forfeiture. At least it's on the docket  
5 already. And also we handed up at the last proceeding the  
6 restitution order, as well as the judicial order of removal.

7 THE COURT: Yes, I've signed the judicial order of  
8 removal, and I will order his immediate removal after he has  
9 served his sentence. I did sign the order of restitution. I  
10 don't see a copy of the forfeiture order.

11 MS. CHOI: Your Honor, I believe that you entered it  
12 at the time of the plea.

13 THE COURT: Yes. I was going to say it was probably  
14 entered at the time of the plea, not at the time of the  
15 scheduled sentence. Is that on the docket? It may be on the  
16 docket. We'll find out and have that filed.

17 What's the government's position as to whether or not  
18 a period of supervised release is appropriate to impose?

19 MS. CHOI: Your Honor, I think that it would be  
20 appropriate to the extent that he is for some reason not  
21 removed in a timely fashion, and generally in those  
22 circumstances the supervised release conditions include that he  
23 would obey whatever direction he got from immigration  
24 authorities.

25 THE COURT: Then I'm going to impose a period of two

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1 years supervised release, if he is not immediately removed  
2 after serving the balance of his sentence.

3 The mandatory conditions of supervised release are  
4 imposed. The defendant shall not commit another federal,  
5 state, or local crime.

6 The defendant shall not unlawfully possess a  
7 controlled substance.

8 The defendant shall cooperate in the collection of any  
9 DNA as directed by the probation office.

10 I will also impose the standard conditions of  
11 supervision 1 through 12 as recommended by the presentence  
12 report, with the special condition that defendant shall obey  
13 the immigration laws and comply with the directives of  
14 immigration authorities. And if he is released from custody in  
15 the United States, he shall participate in an outpatient  
16 treatment program which includes testing to determine whether  
17 defendant has reverted to the use or abuse of drugs or alcohol.

18 As I indicated, I will order restitution.

19 Obviously, I have very little confidence that any  
20 significant amount of restitution will be obtained in this  
21 case, but I will order that restitution be paid in monthly  
22 installments to begin 30 days after his release from custody,  
23 in monthly installments of 10 percent of his gross monthly  
24 income.

25 I do have the forfeiture order. It was signed and, I

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1 believe, filed on March 20, 2019.

2 Mr. Rimasauskas, you have the right to appeal this  
3 conviction and sentence to the extent that you've not waived  
4 such right at the time of your plea.

5 If you wish to appeal any portion of this conviction  
6 of sentence, you should discuss it immediately with your  
7 attorney.

8 In order to preserve your right to appeal, a notice of  
9 appeal must be filed on your behalf within 14 days of entry of  
10 today's judgment.

11 Anything further by the government?

12 MS. CHOI: Your Honor, just a minor housekeeping  
13 issue, and I might have missed it. We just wanted to make sure  
14 the special assessment of \$100 had been imposed.

15 THE COURT: Yes, I'm sorry. If I did not state that,  
16 I must impose also a mandatory \$100 special assessment on Count  
17 One.

18 MS. CHOI: Thank you, your Honor.

19 At this time, the government would move to dismiss the  
20 open counts of the indictment.

21 THE COURT: That application is granted.

22 Anything further, Mr. Petrus?

23 MR. PETRUS: Thank you, your Honor.

24 I would just note that as I put in my sentencing  
25 memorandum on page 10, I just note for the record that he was

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1 arrested and jailed in Lithuania March 14, 2017. He never made  
2 bail. So I would ask the Court pursuant to 18 U.S.C. 4105 that  
3 he be given credit for all of the time he spent in custody,  
4 including in the foreign jail.

5 THE COURT: What's the government's position?

6 MS. CHOI: Your Honor, that's fine with the  
7 government. We just wanted to make sure, your Honor, that you  
8 had the judicial removal order.

9 THE COURT: Yes. I have the judicial removal order  
10 and the order of restitution and the order of forfeiture. And  
11 they will all be filed today. So that's the sentence of the  
12 Court.

13 MS. CHOI: Thank you, your Honor.

14 MR. PETRUS: Thank you, your Honor.

15 On behalf of Mr. Rimasauskas, we recommend and ask the  
16 Court seal the off-camera sidebar conversation.

17 MS. CHOI: No objection, your Honor.

18 THE COURT: That will be ordered sealed.

19 (Adjourned)  
20  
21  
22  
23  
24  
25